ATTORNEY FOR APPELLANT:

FREDERICK W. CROW
Young & Young
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

DEANNA A. DEAN-WEBSTER
Doyle, Wright & Dean-Webster
Greenwood, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARQUETTE A. JAMISON,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A05-0010-CV-426
	)	
MEIJER, INC.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable William T. Lawrence, Judge
Cause No. 49C01-9903-CT-558

June 19, 2001

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Plaintiff Marquette Jamison ("Jamison") appeals the grant of summary judgment in favor of Meijer, Inc. ("Meijer") on Jamison's negligence claim. We affirm.

Issue

The sole issue presented on appeal is whether the trial court erroneously granted summary judgment in favor of Meijer.

Facts and Procedural History

On January 6, 1998, Jamison purchased items in a Meijer store located on Pike Plaza Road in Indianapolis, and was leaving the store when she fell. (R. 126.) Jamison did not see anything on the floor, nor did she have debris on her person after she fell. (R. 127.) However, according to comments made by an unidentified Meijer cashier, the area where Jamison fell was a location where other people had fallen. (R. 132.)

On March 11, 1999, Jamison filed a negligence complaint against Meijer. (R. 7.) On December 20, 1999, Meijer filed for summary judgment. (R. 48.) A hearing was held on September 5, 2000. At its conclusion, the trial court granted summary judgment in favor of Meijer. (R. 5.) Jamison now appeals.[1]

Discussion and Decision

I. Standard of Review

We employ the same standard used by the trial court when reviewing the grant or denial of summary judgment. Crossno v. State, 726 N.E.2d 375, 378 (Ind. Ct. App.

[1] As part of the Indiana Court of Appeals Centennial Celebration, oral argument was held on May 15, 2001 in Shelbyville, Indiana.

2000). Summary judgment is appropriate only when the evidentiary matter designated by the parties shows that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Indiana Trial Rule 56(C). Summary judgment is rarely appropriate in negligence actions. Colen v. Pride Vending Service, 654 N.E.2d 1159, 1162 (Ind. Ct. App. 1995). Nevertheless, a defendant is entitled to judgment as a matter of law when the undisputed material facts negate at least one element of the plaintiff's claim. Id. The moving party bears the burden of showing the absence of a factual issue and his entitlement to judgment as a matter of law. Id. When the defendant makes a motion for summary judgment supported by materials contemplated by Indiana Trial Rule 56, the plaintiff may not rest on her pleadings, but must set forth specific facts controverting the claim for summary judgment, using supporting materials contemplated by the rule. Id. at 1162-63. If the opposing party fails to meet this burden, summary judgment may be granted. Id.

A trial court's grant of summary judgment is clothed with a presumption of validity on appeal, and the appellant bears the burden of demonstrating that the trial court erred. Crossno, 726 N.E.2d at 378. Nevertheless, the designated evidence must be carefully scrutinized to ensure that the plaintiff was not improperly denied a day in court. Id.

II. Analysis

Jamison contends that Meijer is not entitled to summary judgment on her negligence claim because she demonstrated the existence of a genuine issue of material fact as to whether Meijer breached a duty of care owed to her. She relies upon her

Affidavit, designated to the trial court in opposition to summary judgment, providing in pertinent part:

> I heard a young lady talking, and she extended her hand to help me up off the floor. The young lady was an employee of Meijer, Inc., and she proceeded to tell me something to the effect that she had told them something was wrong with the floor. She said this was the third or fourth time someone had fallen in that spot. She also said she had told them something was wrong with the floor, but they wouldn't listen.
>
> At that time, a manager who worked for Meijer, Inc. was walking by, and the cashier told him, in front of me, that I had fallen and she also proceeded to tell him that she had told him before that something was wrong with the floor, and that others had fallen in the exact same spot as well. His response was to walk away quickly and said he would have someone clean it up.

(R. 99-100.) Meijer responds that negligence cannot be inferred from the mere fact of an accident and summary judgment was properly granted because Jamison failed to designate specific facts to support each element of her negligence claim. We agree.

To recover upon a negligence claim, Jamison must establish (1) a duty owed to Jamison by Meijer, (2) Meijer's breach of that duty, and (3) injury to Jamison (4) proximately caused by Meijer's breach of duty. See Midwest Commerce Banking Co. v. Livings, 608 N.E.2d 1010, 1012 (Ind. Ct. App. 1993). It is undisputed that Meijer owed a duty to exercise reasonable care for the protection of its customer and invitee Jamison. However, to withstand summary judgment, Jamison was required to establish specific facts which would demonstrate that there was an object on or defect in Meijer's floor and Meijer unreasonably failed to discover and remedy the hazardous condition. See Barsz v. Max Shapiro, Inc., 600 N.E.2d 151, 152-53 (Ind. Ct. App. 1992). Absent factual evidence designated to the trial court, negligence will not be inferred. Hayden v. Paragon

Steakhouse, 731 N.E.2d 456, 458 (Ind. Ct. App. 2000). Specific factual evidence, or reasonable inferences that might be drawn therefrom, *on each element* must be designated to the trial court. Id. at 458 (emphasis in original). Moreover, an inference that rests on mere speculation or conjecture is not reasonable. Midwest, 608 N.E.2d at 1012.

This court has consistently held that, to withstand summary judgment in a slip and fall case, the plaintiff must come forward with some evidence of how the defendant's alleged negligence proximately caused the plaintiff's fall and consequent injury. Hayden, 731 N.E.2d at 459 (restaurant guest who fell in the parking lot and did not know the cause of his fall but "believed" it was ice improperly relied upon speculation to explain the proximate cause of his injuries); Midwest, 608 N.E.2d at 1013 (plaintiff who fell when standing near queuing ropes in a bank did not come forward with specific facts that would demonstrate how the placement of the queuing ropes or other allegedly negligent behavior on the part of the Bank caused or contributed to her fall); Hale v. Community Hosp. Of Indianapolis, 567 N.E.2d 842, 843 (Ind. Ct. App. 1991) (plaintiff who slipped and fell on crosswalk and later saw "bad places" in the curb but did not know if they caused her fall could not withstand summary judgment for the defendant where no evidence of negligence had been established or placed at issue); Ogden Estate v. Decatur County Hosp., 509 N.E.2d 901, 903 (Ind. Ct. App. 1987) (estate's allegation that decedent slipped and fell on a slick hospital restroom floor could not be supported by an inferred chain of events premised on the fact that decedent was found lying on the restroom floor).

Here, evidence designated to the trial court discloses that Jamison does not know what caused her fall. She testified at her deposition as follows:

Jamison: I just fell, that's the gist of it. I just fell.

Question: Did you see anything on the floor?

Jamison: No.

Question: Did you have any liquid or debris on your clothes?

Jamison: No.

Question: Did you see any foreign substance or food or anything on the floor –

Jamison: No.

Question: --when you were down?

Jamison: No.

Question: Do you know what caused you to fall?

Jamison: No, I don't.

(R. 126-27.) Moreover, Jamison came forward with no evidence that any other person knew what caused her fall. Although others allegedly fell in the vicinity where Jamison fell, there is no evidence concerning the cause of any of the prior falls or when any such falls took place. Thus, there is no evidence that Meijer had notice of a dangerous or defective condition but failed to remedy it. A finding of negligence under these circumstances would necessarily involve inferential speculation. Accordingly, the trial court properly granted summary judgment in favor of Meijer.

Affirmed.

SHARPNACK, C. J. and SULLIVAN, J., concur.